

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation
Against:**

PHILIPP RAMON MELENDEZ, M.D.

Case No. 800-2013-002052

**Physician's and Surgeon's
Certificate No. A 51130**

Respondent

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on November 13, 2015.

IT IS SO ORDERED: October 15, 2015.

MEDICAL BOARD OF CALIFORNIA



**Dev Gnanadev, M.D., Chair
Panel B**

1 KAMALA D. HARRIS
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 TAN N. TRAN
Deputy Attorney General
4 State Bar No. 197775
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8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 800-2013-002052

12 **PHILIPP MELENDEZ, M.D.**
13 **3543 San Dimas Street**
Bakersfield, CA 93301
14 **Physician's and Surgeon's Certificate No.**
A51130

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 Respondent.

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 PARTIES

20 1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical
21 Board of California. She brought this action solely in her official capacity and is represented in
22 this matter by Kamala D. Harris, Attorney General of the State of California, by Tan N. Tran,
23 Deputy Attorney General.

24 2. Respondent PHILIPP MELENDEZ, M.D. ("Respondent") is represented in this
25 proceeding by attorney Dennis R. Thelen, whose address is: LeBeau Thelen, LLP, 5001 E.
26 Commercenter Drive, Suite 300, Bakersfield, CA 93309.
27
28

3. On or about August 25, 1992, the Medical Board of California issued Physician's and Surgeon's Certificate No. A51130 to PHILIPP MELENDEZ, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2013-002052 and will expire on July 31, 2016, unless renewed.

JURISDICTION

4. Accusation No. 800-2013-002052 was filed before the Medical Board of California (Board) , Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on January 13, 2015. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2013-002052 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2013-002052. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 CULPABILITY

2 9. Respondent does not contest that at an administrative hearing, complainant could
3 establish a *prima facie* case with respect to the charges and allegations contained in Accusation
4 No. 800-2013-002052, and that he has thereby subjected his Physician's and Surgeon's
5 Certificate No. A51130 to disciplinary action.

6 10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
7 discipline and he agrees to be bound by the Board's probationary terms as set forth in the
8 Disciplinary Order below.

9 RESERVATION

10 11. The admissions made by Respondent herein are only for the purposes of this
11 proceeding, or any other proceedings in which the Medical Board of California or other
12 professional licensing agency is involved, and shall not be admissible in any other criminal or
13 civil proceeding.

14 CONTINGENCY

15 12. This stipulation shall be subject to approval by the Medical Board of California.
16 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
17 Board of California may communicate directly with the Board regarding this stipulation and
18 settlement, without notice to or participation by Respondent or his counsel. By signing the
19 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
20 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
21 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
22 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
23 action between the parties, and the Board shall not be disqualified from further action by having
24 considered this matter.

25 13. The parties understand and agree that Portable Document Format (PDF) and facsimile
26 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
27 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

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14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A51130 issued to Respondent PHILIPP MELENDEZ, M.D. (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

2. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping equivalent to the Medical Record Keeping Course offered by the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME)

1 requirements for renewal of licensure.

2 A medical record keeping course taken after the acts that gave rise to the charges in the
3 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
4 or its designee, be accepted towards the fulfillment of this condition if the course would have
5 been approved by the Board or its designee had the course been taken after the effective date of
6 this Decision.

7 Respondent shall submit a certification of successful completion to the Board or its
8 designee not later than 15 calendar days after successfully completing the course, or not later than
9 15 calendar days after the effective date of the Decision, whichever is later.

10 3. CLINICAL TRAINING PROGRAM. Within 60 calendar days of the effective date
11 of this Decision, Respondent shall enroll in a clinical training or educational program equivalent
12 to the Physician Assessment and Clinical Education Program (PACE) offered at the University of
13 California - San Diego School of Medicine ("Program"). Respondent shall successfully complete
14 the Program not later than six (6) months after Respondent's initial enrollment unless the Board
15 or its designee agrees in writing to an extension of that time.

16 The Program shall consist of a Comprehensive Assessment program comprised of a two-
17 day assessment of Respondent's physical and mental health; basic clinical and communication
18 skills common to all clinicians; and medical knowledge, skill and judgment pertaining to
19 Respondent's area of practice in which Respondent was alleged to be deficient, and at minimum,
20 a 40 hour program of clinical education in the area of practice in which Respondent was alleged
21 to be deficient and which takes into account data obtained from the assessment, Decision(s),
22 Accusation(s), and any other information that the Board or its designee deems relevant.
23 Respondent shall pay all expenses associated with the clinical training program.

24 Based on Respondent's performance and test results in the assessment and clinical
25 education, the Program will advise the Board or its designee of its recommendation(s) for the
26 scope and length of any additional educational or clinical training, treatment for any medical
27 condition, treatment for any psychological condition, or anything else affecting Respondent's
28 practice of medicine. Respondent shall comply with Program recommendations.

1 At the completion of any additional educational or clinical training, Respondent shall
2 submit to and pass an examination. Determination as to whether Respondent successfully
3 completed the examination or successfully completed the program is solely within the program's
4 jurisdiction.

5 If Respondent fails to enroll, participate in, or successfully complete the clinical training
6 program within the designated time period, Respondent shall receive a notification from the
7 Board or its designee to cease the practice of medicine within three (3) calendar days after being
8 so notified. The Respondent shall not resume the practice of medicine until enrollment or
9 participation in the outstanding portions of the clinical training program have been completed. If
10 the Respondent did not successfully complete the clinical training program, the Respondent shall
11 not resume the practice of medicine until a final decision has been rendered on the accusation
12 and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of
13 the probationary time period.

14 4. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this
15 Decision, Respondent shall submit to the Board or its designee for prior approval as a practice
16 monitor(s), the name and qualifications of one or more licensed physicians and surgeons whose
17 licenses are valid and in good standing, and who are preferably American Board of Medical
18 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal
19 relationship with Respondent, or other relationship that could reasonably be expected to
20 compromise the ability of the monitor to render fair and unbiased reports to the Board, including
21 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree
22 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

23 The Board or its designee shall provide the approved monitor with copies of the Decision(s)
24 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the
25 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed
26 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role
27 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees
28 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the

1 signed statement for approval by the Board or its designee.

2 Within 60 calendar days of the effective date of this Decision, and continuing throughout
3 probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall
4 make all records available for immediate inspection and copying on the premises by the monitor
5 at all times during business hours and shall retain the records for the entire term of probation.

6 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective
7 date of this Decision, Respondent shall receive a notification from the Board or its designee to
8 cease the practice of medicine within three (3) calendar days after being so notified. Respondent
9 shall cease the practice of medicine until a monitor is approved to provide monitoring
10 responsibility.

11 The monitor(s) shall submit a quarterly written report to the Board or its designee which
12 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
13 are within the standards of practice of medicine, and whether Respondent is practicing medicine
14 safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the
15 quarterly written reports to the Board or its designee within 10 calendar days after the end of the
16 preceding quarter.

17 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
18 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
19 name and qualifications of a replacement monitor who will be assuming that responsibility within
20 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
21 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
22 notification from the Board or its designee to cease the practice of medicine within three (3)
23 calendar days after being so notified Respondent shall cease the practice of medicine until a
24 replacement monitor is approved and assumes monitoring responsibility.

25 In lieu of a monitor, Respondent may participate in a professional enhancement program
26 equivalent to the one offered by the Physician Assessment and Clinical Education Program at the
27 University of California, San Diego School of Medicine, that includes, at minimum, quarterly
28 chart review, semi-annual practice assessment, and semi-annual review of professional growth

1 and education. Respondent shall participate in the professional enhancement program at
2 Respondent's expense during the term of probation.

3 5. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
4 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the
5 Chief Executive Officer at every hospital where privileges or membership are extended to
6 Respondent, at any other facility where Respondent engages in the practice of medicine,
7 including all physician and locum tenens registries or other similar agencies, and to the Chief
8 Executive Officer at every insurance carrier which extends malpractice insurance coverage to
9 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15
10 calendar days.

11 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

12 6. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is
13 prohibited from supervising physician assistants.

14 7. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
15 governing the practice of medicine in California and remain in full compliance with any court
16 ordered criminal probation, payments, and other orders.

17 8. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
18 under penalty of perjury on forms provided by the Board, stating whether there has been
19 compliance with all the conditions of probation.

20 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
21 of the preceding quarter.

22 9. GENERAL PROBATION REQUIREMENTS.

23 Compliance with Probation Unit

24 Respondent shall comply with the Board's probation unit and all terms and conditions of
25 this Decision.

26 Address Changes

27 Respondent shall, at all times, keep the Board informed of Respondent's business and
28 residence addresses, email address (if available), and telephone number. Changes of such

addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event Respondent should leave the State of California to reside or to practice Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

10. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

11. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or

1 Federal jurisdiction while on probation with the medical licensing authority of that state or
2 jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall
3 not be considered as a period of non-practice.

4 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
5 months, Respondent shall successfully complete a clinical training program that meets the criteria
6 of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and
7 Disciplinary Guidelines" prior to resuming the practice of medicine.

8 Respondent's period of non-practice while on probation shall not exceed two (2) years.

9 Periods of non-practice will not apply to the reduction of the probationary term.

10 Periods of non-practice will relieve Respondent of the responsibility to comply with the
11 probationary terms and conditions with the exception of this condition and the following terms
12 and conditions of probation: Obey All Laws; and General Probation Requirements.

13 12. COMPLETION OF PROBATION. Respondent shall comply with all financial
14 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
15 completion of probation. Upon successful completion of probation, Respondent's certificate shall
16 be fully restored.

17 13. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
18 of probation is a violation of probation. If Respondent violates probation in any respect, the
19 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
20 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,
21 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have
22 continuing jurisdiction until the matter is final, and the period of probation shall be extended until
23 the matter is final.

24 14. LICENSE SURRENDER. Following the effective date of this Decision, if
25 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
26 the terms and conditions of probation, Respondent may request to surrender his or her license.
27 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
28 determining whether or not to grant the request, or to take any other action deemed appropriate

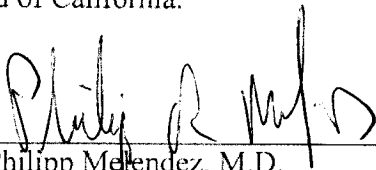
1 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
2 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
3 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
4 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
5 application shall be treated as a petition for reinstatement of a revoked certificate.

6 15. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
7 with probation monitoring each and every year of probation, as designated by the Board, which
8 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
9 California and delivered to the Board or its designee no later than January 31 of each calendar
10 year.

11 ACCEPTANCE


12 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
13 discussed it with my attorney, Dennis R. Thelen. I understand the stipulation and the effect it will
14 have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
15 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
16 Decision and Order of the Medical Board of California.

17
18 DATED: 8/22/15


Philipp Melendez, M.D.
Respondent

20 I have read and fully discussed with Respondent PHILIPP MELENDEZ, M.D. the terms
21 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
22 Order. I approve its form and content.

23 DATED: 8-22-15


Dennis R. Thelen
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated:

8/26/15

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General



TAN N. TRAN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2013-002052

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO January 13, 2015
BY: [Signature] ANALYST

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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 800-2013-002052

PHILIPP R. MELENDEZ, M.D.
3543 San Dimas Street
Bakersfield, CA 93301
Physician's and Surgeon's Certificate
No. A51130,

A C C U S A T I O N

Respondent.

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On or about August 25, 1992, the Medical Board of California issued Physician's and Surgeon's Certificate Number A51130 to PHILIPP R. MELENDEZ, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2016, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2004 of the Code states:

"The board shall have the responsibility for the following:

"(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

"(b) The administration and hearing of disciplinary actions.

"(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

"(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

"(f) Approving undergraduate and graduate medical education programs.

"(g) Approving clinical clerkship and special programs and hospitals for the programs in subdivision (f).

"(h) Issuing licenses and certificates under the board's jurisdiction.

"(i) Administering the board's continuing medical education program."

5. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

6. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

1 "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
2 violation of, or conspiring to violate any provision of this chapter.

3 "(b) Gross negligence.

4 "(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
5 omissions. An initial negligent act or omission followed by a separate and distinct departure from
6 the applicable standard of care shall constitute repeated negligent acts.

7 "(1) An initial negligent diagnosis followed by an act or omission medically appropriate
8 for that negligent diagnosis of the patient shall constitute a single negligent act.

9 "(2) When the standard of care requires a change in the diagnosis, act, or omission that
10 constitutes the negligent act described in paragraph (1), including, but not limited to, a
11 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
12 applicable standard of care, each departure constitutes a separate and distinct breach of the
13 standard of care.

14 "(d) Incompetence.

15 "(e) The commission of any act involving dishonesty or corruption which is substantially
16 related to the qualifications, functions, or duties of a physician and surgeon.

17 "(f) Any action or conduct which would have warranted the denial of a certificate.

18 "(g) The practice of medicine from this state into another state or country without meeting
19 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
20 apply to this subdivision. This subdivision shall become operative upon the implementation of
21 the proposed registration program described in Section 2052.5.

22 "(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
23 participate in an interview scheduled by the mutual agreement of the certificate holder and the
24 board. This subdivision shall only apply to a certificate holder who is the subject of an
25 investigation by the board."

26 7. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain
27 adequate and accurate records relating to the provision of services to their patients constitutes
28 unprofessional conduct."

1 **FIRST CAUSE FOR DISCIPLINE**

2 (Gross Negligence)

3 8. Respondent is subject to disciplinary action under section 2234, subdivision (b) of
4 the Code, in that Respondent engaged in acts and omissions in the care and treatment of a patient,
5 constituting gross negligence. The circumstances are as follows:

6 A. Patient A. R.¹ presented to Respondent for prenatal care on May 12, 2011
7 as a new obstetric patient. Her last menstrual period (LMP) was March 17, 2011,
8 and her expected delivery date (EDD) was confirmed by ultrasound to be
9 December 22, 2011.

10 B. Although this was a new pregnancy, the patient had been known to
11 Respondent since the age of fifteen since Respondent had treated the patient for at
12 least two other prior pregnancies, and he had known about the patient's medical
13 history and prior cesarean sections.

14 C. Since the patient's first delivery, she had two additional cesarean sections,
15 as well as an early miscarriage. Despite knowing the patient's medical history,
16 Respondent recorded no significant past medical history, although elevated blood
17 pressures were documented outside of pregnancy, and Respondent documented
18 that the patient was obese.

19 D. The history of a prior classical cesarean delivery was not recorded on the
20 ACOG flow sheets in this pregnancy or in the 2010 pregnancy for which
21 Respondent also provided care. The diagnoses of insulin-requiring gestational
22 diabetes and pre-eclampsia² in the patient's 2010 pregnancy is also not
23 documented.

24 E. On the patient's first prenatal visit on May 12, 2011, 2+ proteinuria is
25 documented.³ Although the patient's protein levels fluctuated and rose throughout

26 ¹ In this accusation the patient is referred to by initial to protect her privacy.

27 ² A disorder of pregnancy characterized by high blood pressure and large amounts of
protein in the urine.

28 ³ Proteinuria means the presence of an excess of serum proteins in the urine. Proteinuria
(continued...)

her pregnancy, records show that Respondent merely instructed the patient to drink more water, but do not show that Respondent referred the patient to a specialist to treat the proteinuria.

F. The patient failed her one hour glucose tolerance test, which was elevated at 213. There is no record that a diagnostic three hour test was performed. On September 15, 2011 (25 weeks) and September 26, 2011 (27 weeks) the patient complained of pressure and spotting. Progress notes do not document a speculum exam, digital cervical exam or ultrasound. No record could be found of any ultrasound besides the ultrasound performed on the initial visit.

G. On July 15, 2011, an elevated blood pressure is first detected at 17+ weeks of gestation. Blood pressure is again increased on October 26, 2011 at 142/82 (at 31 5/7 weeks of gestation). No note is made of this in the visit summary and the patient is scheduled to return in two weeks.

H. On November 10, 2011 (34 weeks pregnant), the patient complained of pain/cramping, and her Proteinuria is 4+. The abdominal exam is listed as "normal." No fetal heart rate is documented. The patient is given a prescription for a narcotic pain reliever and terbutaline. Respondent continues to follow the EDD, scheduled for December 15, 2011.

I. On November 17, 2011, the patient presented to Bakersfield Memorial Hospital complaining of abdominal pain, vaginal bleeding, and having passed a large blood clot. The patient was noted to be contracting irregularly, blood pressures were elevated, and proteinuria was again present. After nursing staff communicated these findings to Respondent, he treated the patient by phone and

(...continued)

may be a sign of kidney damage, which makes this type of pregnancy high risk. Throughout the patient's pregnancy, especially toward the end, the patient's urine tests were always positive for protein. On August 5, 2011, the patient had 4+ proteinuria. On September 15, 2011 and November 17, 2011, the patient had 3+ proteinuria. On November 29, 2011, the patient was noted to have 4+ proteinuria.

ordered 1 liter IV hydration, a one-time dose of Aldomet⁴ and IV Stadol.⁵ A verbal order was also given to discharge the patient if pain resolved. Respondent did not examine the patient in person.

J. Respondent did not see the patient again until November 29, 2011, nineteen days after her prior office visit. The patient's blood pressure is 152/85 and 4+ proteinuria is noted. The patient's weight also increased eight pounds in two weeks to 210 pounds. No fetal heart rate is documented. The patient complained of increased swelling, off and on headaches and a pink vaginal discharge. The patient was given a prescription for Aldomet and instructed to rest. The visit summary documents a plan for a follow up appointment in one week.

K. That afternoon, at 3:50 pm on November 29, 2011, the patient presented to Labor & Delivery in Bakersfield Memorial Hospital complaining of severe abdominal pain and no fetal activity for one hour. The nurses placed the patient in her bed but could not document a fetal heart rate.

L. Respondent was called at 3:56 pm and arrived at 4:02 pm. He documented a very slow fetal heart rate by ultrasound. An emergency cesarean section was performed. A uterine rupture and complete abruption of the placenta occurred, and the fetus was not alive when evacuated from the uterus.

M. Proteinuria on a subsequent formal UA was 2+. Respondent did not mention a diagnosis of pre-eclampsia in his notes, nor did he order magnesium sulfate for seizure prophylaxis. The blood pressure was noted to be 147/85 on postoperative day 1. The patient was discharged on postoperative day 2.

N. The patient was seen for a postoperative visit for staple removal on December 5, 2011. She had lost twenty-five pounds in five days. Her blood pressure was 169/94 at that time. This is not mentioned in the visit summary.

There is no documentation that the patient was questioned about symptoms of pre-

⁴ A drug used to treat gestational hypertension.

⁵ A painkiller used to manage the pain of labor.

1 eclampsia or that any additional evaluation was ordered. The patient was
2 scheduled to return in five weeks.

3 O. Respondent engaged in gross negligence in the care and treatment of
4 patient A. R., as follows:

- 5 (1) By failing to properly manage a high-risk pregnancy with a prior classical
6 cesarean section, thus representing an extreme departure from the standard
7 of care.
- 8 (2) By failing to properly diagnose and manage a pregnant woman with
9 chronic hypertension, chronic proteinuria, and suspected pre-eclampsia and
10 gestational diabetes, all conditions which made this a high-risk pregnancy
11 requiring urgent intervention.
- 12 (3) By failing to adequately maintain and/or document the patient's
13 medical/surgical history, as well as the care and procedures provided
14 during patient visits.
- 15 (4) By failing to deliver the baby earlier, despite signs of fetal distress which
16 were evident before November 29, 2011 and the previously scheduled
17 EDD of December 15, 2011.
- 18 (5) By allowing a nineteen day interval between the last two patient visits in a
19 high-risk patient.
- 20 (6) By failing to follow up on an elevated one hour glucose (e.g. by having the
21 patient undergo a 3 hour glucose tolerance test) obtained on July 25, 2011,
22 at twenty weeks pregnancy in a patient with a history of gestational
23 diabetes.
- 24 (7) By failing to document any laboratory evaluation of proteinuria (e.g. 24
25 hour urinary protein, chemical panel, glucose tolerance test, liver function
26 tests) in a high-risk patient with marked proteinuria, elevated blood
27 pressure, abnormal blood sugars, and a previous history of pregnancy
28 induced hypertension and gestational diabetes.

- 1 (8) By failing to document any sonograms, non-stress test(s), or biophysical
2 profiles in a patient with proteinuria, elevated blood pressure, elevated
3 blood sugars, and a previous medical history which showed a high-risk for
4 intrauterine growth retardation and/or fetal demise.
- 5 (9) By failing to evaluate vaginal bleeding noted at 25 and 27 weeks in a
6 patient who was at risk for abruption.

7 **SECOND CAUSE FOR DISCIPLINE**

8 (Repeated Negligent Acts)

9 9. By reason of the facts and allegations set forth in the First Cause for Discipline
10 above, Respondent is subject to disciplinary action under section 2234, subdivision (c) of the
11 Code, in that Respondent engaged in acts and omissions in the care and treatment of patient A.R.,
12 constituting repeated negligent acts.

13 **THIRD CAUSE FOR DISCIPLINE**

14 (Inadequate Records)

15 10. By reason of the facts and allegations set forth in the First Cause for Discipline above,
16 Respondent is subject to disciplinary action under section 2266 of the Code, in that Respondent
17 failed to maintain adequate and accurate records of his care and treatment of patient A.R.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 51130, issued to Philipp R. Melendez, M.D.;
2. Revoking, suspending or denying approval of Philipp R. Melendez , M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;
3. Ordering Philipp R. Melendez, M.D. to pay the Medical Board of California the costs of probation monitoring, if placed on probation; and
4. Taking such other and further action as deemed necessary and proper.

DATED: January 13, 2015


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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